

# Meeting Minutes December 4, 2003

## Town of Los Altos Hills City Council Regular Meeting

Thursday, December 4, 2003, 6:00 P.M.  
Council Chambers, 26379 Fremont Road

### 1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Cheng called the Regular Meeting of the City Council to order at 6:00 p.m. in the Council Chambers at Town Hall.

Present: Mayor Cheng, Mayor Pro Tem O'Malley, Councilmember Bob Fenwick, Councilmember Breene Kerr and Councilmember Dean Warshawsky  
Absent: None  
Staff: City Manager Maureen Cassingham, City Attorney Steve Mattas, Planning Director Carl Cahill, Acting City Engineer David Ross, and City Clerk Karen Jost  
Press: Tim Seyfert, Los Altos Town Crier and Kaye Ross, San Jose Mercury News

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to limit the length of time for public comments to three minutes.

### 2. APPOINTMENTS AND PRESENTATIONS

#### 2.1 Presentation by Telecommunications Management Corporation (TMC) Regarding the Status of Cable Franchise Audit and Renegotiations

City Manager Cassingham introduced Carl Pilnick, President of Telecommunications Management Corporation (TMC). TMC is assisting the Town with the review of the present franchise with Comcast for cable television services and with the review of the existing cable ordinance, as well as, with the negotiation process for the renewal of services.

Mr. Pilnick addressed Council. Council had before them a summary letter from TMC outlining the status of their contract Tasks. They have completed Task 1, the Franchise Compliance Audit and a report has been submitted to the Town. The draft regulatory ordinance has been forwarded to the Town to be reviewed by the City Attorney and Comcast. Pilnick explained that no action by Council is required on the ordinance until the Town is prepared to sign the new franchise renewal agreement. Task 2, the assessment of community needs, will require the scheduling of a public meeting that will allow the residents an opportunity to voice their opinions and concerns. This is projected to be completed in January. TMC will then prepare recommendations for Council's consideration for the franchise renewal that will assist the Council in establishing their priorities for the negotiation process. Pilnick referenced his experience with similar

negotiations and he expects the Town's negotiation proceedings to require 3-6 meetings with Comcast.

Pilnick expressed the belief that the Town will be able to gain some benefits with the new franchise agreement. These include the support for public educational and governmental use of the cable system. Pilnick added that this would be considered within the reasonable range of negotiations.

In conclusion, Pilnick noted that the Comcast Franchise Agreement extension to June 20, 2004 on tonight's agenda for Council's consideration should be adequate time to complete the negotiation process.

Councilmember Fenwick requested clarification on the existing franchise agreement. He questioned whether Comcast is bound to the provisions of the original agreement between the Town and Sun Country Cable. Fenwick was particularly interested in the clause regarding universal service.

Pilnick explained that when Comcast purchased the assets from AT&T Broadband they needed the approval of the Town to continue operating the franchise service. Universal Service is very ambiguous in the original agreement. There is a line extension agreement and density clauses with references to shared expenses with homeowners. Pilnick said the negotiation for the new agreement will include a requirement for universal service throughout the Town under the same conditions to every residence, including those that will be eventually annexed.

Councilmember Warshawsky asked if it was possible to require Comcast to share in the costs of undergrounding utilities. Pilnick explained that the draft agreement does require them to pay their share of costs for any area that converts from aerial to underground service and if other utilities underground they must follow.

Councilmember Kerr requested information on the upgrading of the Comcast Cable service to include high speed internet access. Pilnick noted that this was not part of the renegotiation, however, it was in the best interest of Comcast financially to offer this service.

## 2.2 Presentation by Comcast Cable – Report on the Status of the Cable System Upgrade

Kathi Noe, Director of Government Relations and Franchising, Comcast Cable, addressed Council. She stated that the company is committed to upgrading the existing system and bringing high speed internet access to Comcast customers. Comcast is presently in the design phase of the project but they expect to begin construction in some areas this month. Noe noted that they will keep the City Manager apprised of their progress. She will return to Council in January with a more definitive list of the streets that do not meet the density requirements where Comcast will be asking the customers to share the upgrade and service delivery costs. Noe will also report back to Council with the percentage of the residents of the Town served by Comcast. The upgrade is expected to be completed by the end of April, 2004.

### 3. PLANNING COMMISSION REPORT

Planning Director Carl Cahill reported that the Planning Commission had not met since the last City Council meeting.

Cahill announced he had received notification from the State's Department of Housing and Community Development stating that they will certify the Town's Housing Element once it is adopted by the City Council. Council acknowledged the "good news" and congratulated Cahill.

### 4. CONSENT CALENDAR

Items Removed: Item 4.1 (O'Malley), 4.5 (Warshawsky), 4.6 (Jim Abraham/Public), 4.9 (Fenwick), 4.10 (Duffy Price/John Harpootlian/Public)

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously, to approve the remainder of the consent calendar, specifically;

- 4.1 Approval of Minutes: Special City Council Meeting November 17, 2003
- 4.2 Review of Disbursements: 11/11/2003 – 11/24/2003 \$300,204.89
- 4.3 Acceptance of Summary Vacation of 15-Foot Storm Drain Easement and Dedication of 15-Foot Storm Drain Easement, Lands of Teng, 24460 Summerhill Avenue Reso #92-03 and Reso# 93-03
- 4.4 Notification of Planning Commission Approval: A Request for a Site Development Permit for a Landscape Screening and Rededication of a Storm Drain Easement; Lands of Teng, 24460 Summerhill Avenue, (206-02-ZP-SD)
- 4.7 Consideration of Closure of Town Hall on Friday, January 2, 2004
- 4.8 Approval of a Grant of Open Space Easement: Purissima Hills Water District: 26451 Ascension Drive – Reso #94-03

Items Removed:

- 4.1 Approval of Minutes: Regular City Council Meeting November 20, 2003

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to approve the minutes of the Regular City Council Meeting of November 20, 2003 with the following correction: page 18, paragraph 3, should read "Mayor Pro Tem O'Malley stated that the property that was not originally subdividable was subdivided."

- 4.5 Notification of Planning Commission Approval: A Request for a Site Development Permit to Legalize an Existing Non-Conforming Pool; Patio and Hardscape Improvements and Variances to Exceed the Property's Maximum

Development Area and to Encroach into the 30-foot Side Yard Setback; Lands of Lo, 14303 Saddle Mountain Drive (204-03 ZP-SD-VAR)

Councilmember Fenwick asked the Planning Director for clarification on this item. He questioned the lack of a staff report to the City Council

Cahill explained that the current procedure is to move the Planning Commission's actions forward as a notification to Council as required by the Town's code. In the future, the items will include a template face sheet in addition to the language that is on the agenda. This will better describe the action taken by the Commission.

City Attorney Mattas explained that the notification of the Planning Commission's action on the Consent Calendar is the Council's opportunity to call it up to be reviewed by the Council and direct staff to schedule the item for a Public Hearing before the Council.

Council discussion ensued regarding the process for the approval of variances. Cahill noted that the Planning Commission is the final authority on these requests, however, the Council can appeal these decisions.

Councilmember Kerr appealed the Planning Commission's approval of "A request for a Site Development Permit to Legalize an Existing Non-Conforming Pool; Patio and Hardscape Improvements and Variances to Exceed the Property's Maximum Development Area and to Encroach into the 30-foot Side Yard Setback; Lands of Lo, 14303 Saddle Mountain Drive (204-03 ZP-SD)".

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed unanimously, with Councilmember Fenwick abstaining from the vote, to set this item for a Public Hearing before the City Council at their Regular City Council Meeting of January 15, 2004.

4.6 Approval of Second Extension of Current Cable Television Franchise Agreement Between the Town of Los Altos Hills and Comcast

Jim Abraham, resident, explained that he had requested discussion of this item because he has some serious concerns regarding Comcast's proposed upgrade. He has had an opportunity to review Comcast maps and has found several irregularities. In particular, they have sited two (2) utility poles in his driveway. Abraham noted that his utilities are undergrounded. He has contacted Comcast several times for an explanation, but they have been unresponsive. Abraham would like to see several conditions added to the franchise extension including: no existing underground wiring will be moved above ground; no new segment will be placed above ground where any existing undergrounding is in place; no new utility poles, no large equipment cabinets on utility poles, and where any new undergrounding of utilities is performed – Comcast will underground within sixty days. Abraham would like penalties assessed if they are non-compliant. He also encouraged Council to not grant exclusive rights to Comcast for cable television service. Mayor Pro Tem O'Malley acknowledged that the Council will have to adopt the extension to be able to even consider negotiating the list of requirements proposed by Abraham.

City Manager Cassingham encouraged the Council to support the extension to permit the Town to continue the renegotiation of the franchise agreement. She will take the information from Mr. Abraham that has been discussed this evening and work with the City Engineer and Comcast to address these concerns.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to approve the proposed extension of the current cable franchise extension between the Town of Los Altos Hills and Comcast to June 20, 2004.

- 4.9 Approval of a Conservation Easement Agreement with Exceptions to Allow for Any Structure or Use, Which Would Not Otherwise Violate the Provisions of the Zoning Law of the Town, in Certain Areas of the Existing Conservation Easement; Lands of Kerns, 11888 Francemont Drive (Upper Parcel)

Councilmember Fenwick noted that the agenda language did not correspond with the staff report title. City Attorney Mattas explained that the Conservation Easement Agreement had been modified to address all concerns and issues that had been identified by the Council during the Public Hearing at their last meeting. The documents have been fully executed and will be recorded by the City Clerk tomorrow if approved by Council this evening.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Kerr and passed unanimously to approve the Conservation Easement Agreements for 11888 Francemont Drive and 11885 Francemont Drive attached to the staff reports before Council. Reso #95-03 and Reso #96-03

- 4.10 Approval of Amendment #1 to the Purissima Sewer Lift Station Agreement

Duffy Price, Anacapa Drive, explained that she had requested that this item be removed from the Consent Calendar for the purposes of discussion by Council due to the impact on her property. The sewer project has a raised manhole in close proximity to her residence, and they have been bothered by the smell of gasses leaking from the area. The City Engineer has attempted to address the problem by sealing the manhole, but this has not resolved the issue. Price is concerned that adding additional users to the facility will increase the problem.

John Harpootlian, Anacapa Drive, stated that he has spoken with Bruce Askari, the developer of the Purissima Sewer project. Askari had voiced his opinion that the problem is due to the lack of maintenance by the Town. The station should be regularly cleaned and cleared or it does not vent properly. Harpootlian hoped that Council would consider reviewing this project before approving the list of additional users.

Acting City Engineer David Ross explained that only two future users are being added to the sewer users list. The project has been reviewed by the Town's Engineering services contractor Mark Thomas, Inc. and found to be working properly. He explained that when more users are added and the volume of sewage and waste water is increased it will generate more pumping which should alleviate the problem. Until this occurs, additional cleaning would help.

Price asked if something could be done to mitigate the appearance of the elevated manhole structure. It has been painted red.

## 5. UNFINISHED BUSINESS

### 5.1 Update on Mayor's Goals

#### 5.1.1 New Town Hall – Status Report

Councilmember Kerr reported that the New Town Hall Committee will be meeting on December 9, 2003. He will advise Council of any updates at the next Council meeting.

#### 5.1.2 Undergrounding of Utilities – Status Report

##### 5.1.2(a). Proposed Agreement Between Godbe Associates and the Town of Los Altos Hills For A Telephone Survey Regarding the Undergrounding of Utilities

Councilmember Warshawsky explained that Council had before them for their consideration the proposed agreement for the telephone survey. The Undergrounding Committee had interviewed three potential providers of this service and had selected Godbe Research as the strongest candidate based on their previous experience with similar projects; their close proximity to the Town (located in Half Moon Bay); and the proposal price. Warshawsky added that Council had two proposals in their packet and he is recommending the proposal with the not-to-exceed amount of \$12,775. The scope of services for the project includes twelve tasks and Godbe is confident they will be able to identify the Town's opinion and gauge their interest in the undergrounding of utilities.

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Kerr and passed unanimously to approve the agreement between the Town of Los Altos Hills and Godbe Research for the not-to-exceed amount of \$12,775. Reso #98-03

#### 5.1.3 Master Pathway Map – Status Report

Chris Vargas, Pathways Committee Chair, reported that the Committee's next meeting to review the update process for the pathways map is scheduled for Monday, December 8, 2003. He is before Council this evening to request some direction from the City Attorney. As background, Vargas explained that the Committee has divided the update process for the pathways map into two segments – roadside paths and off-road paths. His questions this evening pertain to roadside paths which comprise the majority of the pathway network.

1. How do we confirm the status of the Town's roads? Can the Committee make the assumption that every public road has access?

2. What can the Committee assume about private roads? There is no standard language on tract maps regarding public access. Can a blanket assumption be made that the public can expect some form of pedestrian access?

3. If the answer is no to question 2, how can the Pathways Committee identify which types of private roads expressly forbid pedestrian access?

City Attorney Steve Mattas responded that he understood the tenor of the questions. They are fairly broad and potentially, with discussion with the Pathways Committee, could be better defined. For example, in response to question 1, the public has the right to access a public road but the question is really about pathway easements adjacent to the road. You cannot make a blanket answer-each is site specific. The easements might be located in a public right of way or in a private easement that is adjacent to the right of way. The Committee will need to invest time in reviewing and investigating the Town's records to determine the scope of the authority of the road.

Vargas explained that the goal of the Committee is to build a pathway system that will utilize public and private roads. He feels a determination on his questions is necessary for the Committee to decide if their first priority in the map update should be roadside or off-road paths.

Mayor Pro Tem O'Malley explained that originally when this process had begun, the focus on the map update was with off-road paths. He questioned the change in priorities, noting that the additional review of private and public roads and easements could add a substantial amount of time to the review process. He encouraged the Committee to focus on the off-road paths.

Council discussion ensued regarding the objectives of the Committee and the vision of the pathways map.

Chris Vargas concurred with Council. The Committee will focus on formalizing the off-road pathways system. He acknowledged that he will not need any additional direction from the City Attorney on the private/public road easements.

The City Council thanked Chris Vargas for his efforts with this challenging update process of the pathways map.

#### 5.1.4 Storm Water Master Plan – Status Report

Acting City Engineer Ross reported that Nolte Associates will be forwarding their report to the City Council in late January, 2004.

#### 5.1.5 Visit to China to Explore Business Opportunities – Status Report

Mayor Cheng distributed information to the Council on the proposed trip. Council will discuss this item at their next meeting.

#### 5.2 Discussion of Mayoral Rotation Policy and Procedure (continued from 10/20/03)

Mayor Cheng explained that she had brought this item forward to Council for their consideration. She noted that most Towns have a policy in place for Mayoral rotation. Cheng believes that having a policy reduces controversy amongst the Councilmembers.

Mayor Pro Tem concurred with the Mayor. He acknowledged that it is reasonable to have a policy in place that elevates the Vice Mayor (Mayor Pro Tem) to Mayor and the Councilmember that has served the longest on the Council, without being Vice Mayor, to Vice Mayor. O'Malley noted that a policy is not binding on future Councils.

Councilmember Warshawsky suggested that if there are two Councilmembers who have served the same time and met the additional criteria for serving as Vice Mayor, the election vote tally could be used as the deciding factor. Council discussion ensued. Council agreed by consensus that in the event that there is no single Councilmember that has served the longest on the Council, the City Council at that time, will determine who will be Vice Mayor.

Councilmember Fenwick expressed his opinion that the policy is not necessary. A policy is not binding and the Mayor Pro Tem generally is chosen to be Mayor.

**MOTION SECONDED AND CARRIED:** Moved by O'Malley, seconded by Kerr and passed by the following roll call vote to adopt the Mayoral rotation policy for the selection of Mayor and Vice Mayor (Mayor Pro Tem): the Vice Mayor will be elevated to Mayor in June and the Councilmember serving on the Council the longest, without serving as the Vice Mayor, will become the Vice Mayor.

AYES: Mayor Cheng, Mayor Pro Tem O'Malley, Councilmember Kerr and  
Councilmember Warshawsky  
NOES: Councilmember Fenwick  
ABSENT: None  
ABSTAIN: None

### 5.3 Discussion of "Citizens for La Paloma Drainage Improvements Proposal"

Planning Director Cahill introduced this item to Council. He explained that staff has met with the applicants' (Wadhwani) representatives and that a process is in place for a formal review of the project by the Planning Commission and the City Council. Tonight's item is a brief presentation by the applicants' representative.

Tom Klope, project Landscape Architect, introduced himself to Council. He explained that the site development permit for this property was approved two years ago. At the time of approval, it included an existing 645 foot open rock channel for drainage that headwalls at Fremont Road. This was installed by the Town as a part of a flood mitigation measure. Klope explained that the channel is difficult to adequately maintain. There are health and safety issues from the suburban run-off that include mosquitoes, odors and potential flooding.

Klope noted that Mr. Wadhwani has offered to underground the channel. No improvements will be made outside of the Wadhwani property. The proposed storm



drain will feature a bio swale to increase storm drain infiltration. Klope displayed a conceptual drawing of the swale, including the landscaping that would be used to mitigate it's appearance.

In response to Council's questions, Klope explained that the project would take approximately 6 weeks to complete and the project application will be submitted to the Town for review in the near future.

6. NEW BUSINESS

None

7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

Councilmember Warshawsky reported that he attended a meeting of "Splash". This is the fundraising committee for the community pool that will be located in Los Altos. Warshawsky has invited a representative to make a presentation to the Council at a future meeting.

Mayor Cheng reported that she attended the Board meeting for the Library Joint Powers Authority. The special election to renew the library assessment tax has been scheduled for the March ballot. The tax will be \$42 per parcel for seven years. She reiterated the importance of passing the ballot measure to ensure the libraries will have the funding to remain open on their regular schedule.

Mayor Pro Tem O'Malley reported on his attendance at the Santa Clara Valley Water District's Lower Peninsula Group's meeting. The District is optimistic with the possibility of completing the Adobe Creek Reach 5 project.

Councilmember Fenwick reported that he had attended the Emergency Communications Committee meeting. They had enjoyed holiday festivities and received their new DSW (Disaster Service Worker) identification cards. This enables the Committee members to respond to emergencies and ensures that they are covered by the State of California's workers compensation insurance.

Councilmember Kerr reported that he had met with Supervisor Liz Kniss and her staff to discuss the Stanford Trail alternatives. He has also conferred with the Planning Director on this issue. Kerr is not ready to make a recommendation at this date, but he wanted to inform Council of the ongoing process.

8. STAFF REPORTS

8.1 City Manager

8.2 City Attorney

8.3 City Clerk

### 8.3.1 Report on Council Correspondence

#### 9. COUNCIL-INITIATED ITEMS

None

#### 10. PRESENTATIONS FROM THE FLOOR

Roy Woolsey, Community Relations Committee Chairman and Undergrounding Subcommittee member, expressed his support for the proposed telephone survey of Town residents regarding the undergrounding of utilities project. It is his opinion that it is very import to scientifically judge the tenure of the residents to identify their interest in a Town wide project and to evaluate their concerns.

Betty Kerns, 11888 Francemont, would like information regarding Comcast Cable services on private streets.

John Harpootlian, 26435 Anacapa Drive, encouraged the Council to request, during their negotiations with Comcast, that several public channels be provided. He noted that New Town Hall committee member Al Whaley has suggested a minimum of three (3) channels.

Andy Coleman, Manuella Road, member of the Undergrounding Subcommittee, voiced his support for the proposed telephone survey. He emphasized that this was a small investment for possibly the largest project the Town has ever undertaken and an integral part of the Town's due diligence.

Jim Abraham, Los Altos Hills, expressed his support for the telephone survey noting that a scientific survey will help to validate the Town's decision.

#### 11. PUBLIC HEARINGS

None

Council adjourned to Closed Session at 8:30 p.m.

#### 12. CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION: Government Code Section 54956.9(a): Campbell and Ligeti v. Town of Los Altos Hills

CLOSED SESSION: Pursuant to Government Code Section 54956.8: Conference with Real Property Negotiator -  
Property: – APN 182-19-011

Agency Negotiators: Maureen Cassingham and Mayor Pro Tem O'Malley

Negotiating Parties: Town of Los Altos Hills and Friends of Westwind, Inc.

Under Negotiation: Terms and Conditions related to Lease of Property

CLOSED SESSION: Pursuant to Government Code Section 54956.8: Conference with Real Property Negotiator -  
Property: – APN 175-56-3  
Agency Negotiators: Maureen Cassingham and Steve Mattas  
Negotiating Parties: Town of Los Altos Hills and Purissima Hills Water District  
Under Negotiation: Terms and Conditions related to Lease of Property

CLOSED SESSION: Pursuant to Government Code Section 54957: PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager

CLOSED SESSION: Pursuant to Government Code Section 54957: PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Attorney

The City Council reconvened to the Regular City Council Meeting at 9:45 p.m.

The City Council provided direction to staff and no action was taken.

### 13. ADJOURNMENT

There being no further business, the Regular City Council Meeting of December 4, 2003 was adjourned at 9:46 p.m.

Respectfully submitted,

Karen Jost  
City Clerk

The minutes of the December 4, 2003 Regular City Council Meeting were approved at the December 18, 2003 Regular City Council Meeting.